J.F.C. OIL AND GAS

IBLA 81-943 Decided November 27, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management rejecting oil and gas lease offer W-69465.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Drawings

Where on appeal from rejection of a simultaneous oil and gas lease offer, it is alleged that the offer designated "J.F.C. Oil & Gas" was actually submitted on behalf of a sole proprietorship, and the drawing entry card does not show the last name, first name, and middle initial of an individual offeror, the lease offeror will be deemed unqualified under 30 U.S.C. § 181 (1976), and the offer not fully executed under 43 CFR 3112.2-1(a) (1979).

APPEARANCES: John F. Cribbins, d.b.a. J.F.C. Oil and Gas, pro se; Harold J. Baer, Jr., Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

John F. Cribbins has appealed from a decision dated July 30, 1981, by the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneous oil and gas lease offer W-69465. Appellant's drawing entry card (DEC) for parcel WY 4218 in the August 1979 drawing was selected as the number two priority. The number one drawee's offer was disqualified when the number one drawee failed to submit his rental within the time allowed. Thus, appellant's offer became eligible for consideration. The face of appellant's DEC was made out "J.F.C. Oil & Gas." The reverse side was completed by an illegible signature opposite the date.

The decision appealed from rejected appellant's offer as follows:

> Upon final review of your drawing entry card, however, we find it was not completed properly. (A copy of your card is enclosed). A corporation making an offer for an oil and gas lease is required by regulation 43 CFR 3102.2-5 to file a statement of corporate qualifications with the entry card, or alternatively they may refer to a serial number of record wherein the required statements have been filed earlier. (See regulation 43 CFR 3102.2-1(c)).

In his notice of appeal appellant asserts that the decision is based on the assumption that J.F.C. Oil and Gas is a corporation. Appellant states that he filed under the name of J.F.C. Oil and Gas and that the business is conducted by himself as an individual. Appellant has included a "County of Marin Fictitious Business Name Statement" which indicates that J.F.C. Oil and Gas is the fictitious business name of the registrant, John F. Cribbins.

The facts in the case before us closely parallel those in Tom Milner, 45 IBLA 119 (1980) (Administrative Judge Burski concurring), where the offeror had completed the face of the card "Milner Productions" and had entered an illegible signature on the reverse side. In Milner, as in the case before us, there was no indication that any other person was involved. In Milner, the offer was conceded to be that of a sole proprietorship, an entity not qualified under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 (1976), to hold mineral leases. 1/ Accordingly, it was rejected on the ground that it did not meet the requirements for an individual offeror. 43 CFR 3112.2-1 (1979) mandates that offers to lease be "signed and fully executed by the applicant or his duly authorized agent on his behalf." (Emphasis added.)

The facts in the case before us impel the conclusion that appellant's entity was a sole proprietorship. As the concurring opinion in Milner, supra, states at 122:

1/ Section 1 of the Mineral Leasing Act, as amended, 30 U.S.C. § 181 (1976), permits four discrete entities to hold mineral leases: (1) citizens of the United States; (2) associations of such citizens; (3) corporations organized under the laws of the United States, or of any State or Territory thereof; and (4) municipalities (with respect to coal, oil, oil shale, or gas). The applicable regulation, 43 CFR 3102.1-1, repeats the statutory listing. Thus, any entity attempting to acquire a mineral lease must be able to qualify under one of the four provisions of the statute.

> A sole proprietorship is not an alter ego of an individual, but is rather a specific independent entity. A proprietorship is "a business which is owned by a person who has either the legal right and exclusive title, or dominion, or the ownership of that business." Shermco Industries, Inc. v. Secretary of U.S. Air Force, 432 F. Supp. 306, 314 (N.D. Tex. 1978). A proprietorship is not an individual. See Independent Electricians and Electrical Contractors Assoc. v. New Jersey Bd. of Examiners of Electrical Contractors, 54 N.J. 466, 256 A.2d 33, 38 (1969).

The concurring opinion in Milner concisely explains why the regulations proscribe the acquisitions of mineral leases by sole proprietorships:

> In the case of both corporations and associations, detailed statements of interests and qualifications are required to be submitted with the offer. See 43 CFR 3102.3-1(a) and 3102.4-1. The purpose of these disclosure provisions is to assist both in the determination of total acreage holdings and in the discovery of possible violations of the multiple filing prohibitions. There is no requirement for such disclosures when an individual files on his or her own behalf.
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> Thus, if a sole proprietorship were treated merely as an individual there would be no requirement of any disclosure. Since it is axiomatic that the name of the proprietorship need not consist of any part of the name of the individual who controls the proprietorship, the task which would be required for BLM personnel to determine whether the acreage or multiple filing violations have occurred would be enormous. I think it clear that the statute does not authorize nor do the regulations contemplate that a sole proprietorship may hold mineral leases.

Id. at 124.

Assuming that appellant made the lease offer as a citizen of the United States, the offer must meet the requirements for an individual offeror. Thus the card must be completed by showing the individual's name on the face of the card as well as his signature on the reverse side. When an ambiguity is created by an applicant on a drawing entry card, it is not the responsibility of BLM to speculate about the applicant's intention and resolve the ambiguity in his favor. E. J. Haugen, 47 IBLA 109 (1980). Strict compliance with the requirements of fully executing lease offers has been the policy of the Department. See McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). The offer herein must accordingly be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

While in total agreement with the majority opinion, I think it important to note that in a decision styled The Masi Company, A-30996 (July 25, 1969), the Assistant Solicitor for Land Appeals held that a sole proprietor filing in the name of a company was a qualified applicant for a sulfur prospecting permit. That decision is thus, arguably, contrary to our present holding. However, not only could this case be distinguished from the instant appeal on its facts, but the analysis employed in that decision is unpersuasive on the more general legal question.

The Masi Company, supra, involved an application for a sulfur prospecting permit under the Act of April 17, 1926, as amended, 30 U.S.C. U.S.C. §§ 271-276 (1976). One R. M. Barton, a sole proprietor, filed an over-the-counter application for a sulfur prospecting permit in the name of "The Masi Company." The land office manager rejected the application on the ground that a sole proprietor filing in the name of the company was not a qualified applicant. On appeal, the Office of Appeals and Hearings, BLM, affirmed. An appeal was then taken to the Assistant Solicitor for Land Appeals, who reversed.

In The Masi Company, supra, the Assistant Solicitor noted that the question involved was controlled by section 1 of the Mineral Leasing Act, 30 U.S.C. § 181 (1976). The decision then proceeded to analogize the situation to a similar question which had been examined earlier, viz, whether partnerships were within the scope of the term "associations" as used by section 1, 30 U.S.C. § 181 (1976). That question had been answered in the affirmative. See Issuance of Mineral Leases to Partnerships, 74 I.D. 165 (1967). Noting that "the identity of the applicant is the same whether application is made in the name of R. M. Barton or in the name of The Masi Company," the Assistant Solicitor concluded that a sole proprietorship was not disqualified from holding mineral leases. I find this analysis unconvincing.

In the first place, it is simply wrong to contend that "the identity of the applicant is the same" regardless of whether a sole proprietorship or an individual applies. As we noted above, a proprietorship is not the individual, citing Independent Electricians & Electrical Contractors Assoc. v. New Jersey Board of Examiners of Electrical Contractors, 54 N.J. 466, 256 A.2d 33, 38 (1969). It is indeed a separate specific entity. Without belaboring what the majority has said above, the conclusion of the Assistant Solicitor is unsupported in its initial premise. Accordingly, to the extent that anything in The Masi Company, supra, is contrary to the majority holding, it clearly has been overruled.

In any event, The Masi Company, supra, would not be applicable to the facts of this appeal, which involve simultaneous oil and gas

leasing. First of all, in Masi, the appellant agreed that "The Masi Company" was not a fictitious name, but rather a trade name. In the instant case, appellant admits that "J. F. C. Oil and Gas" is a registered fictitious name. More critically, however, The Masi Company, supra, did not involve simultaneous filings. In Masi, the Assistant Solicitor noted that an ambiguity existed on appellant's application form. Thus, that decision recited:

> In the space on the application provided for the signature of the applicant the name of the "The Masi Company" was typed in followed by the signature of Barton. The application itself did not explain the relationship between Barton and the company, and, in the absence of further explanation, it would be impossible to ascertain whether the "sole party in interest" indicated in item 5 is The Masi Company, purportedly a corporation or unincorporated association of citizens, or Barton, an individual, or to ascertain the capacity in which Barton signed the application on behalf of The Masi Company.

The Masi Company, supra at 7 n.5.

In Masi, the Assistant Solicitor found that subsequent submissions had clarified the matter. In simultaneous oil and gas leasing, however, this Board has consistently noted that ambiguities, patent on the face of an offer or application, cannot be explained beyond the limits which the regulation expressly permits, because the rights of the number two mature and prevent such explanations from being regarded. See Ballard Spencer Trust Inc., 18 IBLA 25 (1974), aff'd per curiam, 544 F.2d 1067 (10th Cir. 1976). The instant case clearly shows the ambiguities inherent in filing as a sole proprietorship. Thus, even were The Masi Company good law, it would not embrace the present factual situation. I concur with the majority decision.

James L. Burski
Administrative Judge